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Fax No.: (571) 273-8300 Phone No.: (571) 272-7881
Application No. 10/774,939
Confirmation No. 8623
Subject: Atty. Doc. 09420.0001-00000 Date: September 4, 2007

From: Cortney Alexander Phone No.: 404.653.6409
Fax # Verified by: K.Pearson-Green No. of Pages (incl. this page) 5

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PATENT

Customer No. 22,852

Attorney Docket No. 09420.0001-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Haim Emil DAHAN et al.) Group Art Unit: 3767
Serial No.: 10/774,939) Examiner: Laura C. Schell
Filed: February 9, 2004) Confirmation No.: 8623
For: APPARATUS AND METHOD FOR)
MEASURING FLUID FLOW TO A)
SUCKLING BABY)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO RESTRICTION REQUIREMENT

In the restriction requirement dated May 4, 2007, the Examiner made a restriction under 35 U.S.C. § 121 to one of the following eight species:

Species A: Figs. 3-6.**Species B:** Fig. 7.**Species C:** Fig. 8.**Species D:** Fig. 9.**Species E:** Figs. 10 and 11.**Species F:** Fig. 12.**Species G:** Fig. 13.**Species H:** Figs. 14 and 15.

Application No. 10/478,417
Attorney Docket No. 07040.0173-00000

The Examiner required that Applicants elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The Examiner also required Applicants to identify the claims readable on the elected species. Applicants provisionally elect with traverse to prosecute Species A, claims 1-4, 6-7, 9-11, 16-19, 21-22, 24-26, and 31-36.

The Examiner asserts that no pending claim is generic. Applicants respectfully traverse, as independent claims 1, 16, and 31 each read on all of the species identified by the Examiner. Applicants also respectfully assert that each of the dependent claims elected by Applicants are also generic.

The Examiner asserts that because various species are claimed, the pending restriction requirement is proper. However, to support a requirement for restriction between two or more related product inventions or between two or more related process inventions, both two-way distinctness. MPEP 806.05(j). The distinctness requirement applies only if, among other things, the inventions as claimed do not overlap in scope (i.e. are mutually exclusive). *Id.* Here, while the present application does include dependent claims directed to particular species, they all depend from a generic independent claim. By the very nature of dependent claims, each dependent claim includes each limitation of the independent claim from which it depends. Thus, while the dependent claim may be distinct from the independent claim, the independent claim indisputably overlaps the its dependent claims. Furthermore, the various species identified by the Examiner are not mutually exclusive. For example, the detachable indicator pathway shown in Figures 14 and 15 is not mutually exclusive of the embodiments shown in Species A-G. Similarly, the comfort pad shown in Figures 10

Application No. 10/478,417
Attorney Docket No. 07040.0173-00000

and 11 can be used with any of Species A-D or G-H. Likewise, the milk indicator reservoir shown in Figure 13 can be used with any of Species A-F or H.

Furthermore, to support a restriction requirement between two or more related product inventions, or between two or more related process inventions, the Examiner must provide reasons for insisting on restriction. Here, the Examiner has not identified any reasons why restriction is necessary. Given that the claims directed to a specific species all depend from a generic independent claim, examination of all the claims can be made without serious burden on the Examiner.

For at least these reasons, the pending restriction requirement is improper, and Applicants respectfully request that it be removed.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
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Dated: September 4, 2007

By: 

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